cient for his purpose if a reasonable doubt is raised in the minds of the jury as to whether or not the necessary factors exist. If as a result of the evidence of the whole case, taken and considered together, the jury find themselves in genuine doubt as to whether or not the case falls within one of the exceptions, then their verdict on the point must be in favour of the accused.

Nowhere in the summing up is this made clear to the jury in regard to any of the three exceptions to which we have earlier referred. It follows in view of what we have already said as to the borderline nature of the evidence on these matters that it is impossible for us to say that the jury, if fully directed, would necessarily still have found the appellant guilty of murder.

Having regard to our view of the above matters it is unnecessary to consider the other points that were raised in the appeal.

It was for these reasons that at the conclusion of the hearing of the appeal we set aside the verdict of guilty of murder and substituted one of culpable homicide not amounting to murder; and imposed a sentence of 5 years' imprisonment.

Verdict substituted.

Solicitors: *Marshall & Chung.*

THEVATHASAN v. THEVATHASAN

[A. C. J. (Ambrose J.) July 14, 1960]

[Singapore — District Court Appeal No. 48 of 1959]

Maintenance — Potential earning capacity of wife — Maintenance order — Magistrate's discretion — Whether Court should interfere — Married Women and Children (Maintenance) Ordinance (Cap. 44), s.2(3).

This was an appeal against a maintenance order made by a Magistrate. The parties were married in 1955. They had quarrels over the wife's dowry and in 1956 the appellant sent the respondent to her parents' home to settle the matter of her dowry and to change her attitude towards the appellant completely. In June 1957, the appellant, on hearing from the respondent that she was planning to return to him, wrote to her that she was to return only when sent for and that he had no intention of meeting her at the Singapore Airport. Both in 1958 and 1959 she came to Singapore and made many attempts to meet the appellant but was unsuccessful. She then made a complaint to a Magistrate about the appellant's failure to maintain her. The appellant's reason for not sending for the respondent was that he was not satisfied that she had changed her attitude towards him. Another reason the appellant had for not sending for the respondent was that her father had not given her the property which he promised to give her on her marriage. The Magistrate came to the conclusion that the appellant was wholly to blame for the break-up of the marriage, and awarded maintenance at the rate of $450 a month effective from July 1, 1957.

Two points arose for determination: (i) whether the potential earning capacity of the respondent should have been taken into consideration in assessing maintenance; and (ii) whether the Court should interfere with the exercise of the Magistrate's discretion as regards the date of commencement of the maintenance order.

Held: (1) the learned Magistrate was wrong in not taking into consideration the potential earning power of the respondent and therefore the maintenance awarded should be reduced to $300/- a month;

(2) the date fixed by the learned Magistrate for the commencement of the maintenance order resulted in injustice being done to the appellant and the date of the commencement of the maintenance should therefore be altered to a date nearer the date when the respondent made the complaint to the Magistrate, that is the 1st February, 1959.

Cases referred to:—

(1) *Rose* v *Rose* [1950] 2 All E.R. 311.

(2) *Evans* v. *Bartlam* [1937] 2 All E.R. 646.

The following cases were also cited in argument:

Balasingam v. *Public Prosecutor*, [1959] M.L.J. 193; *Rex* v. *Low Toh Cheng*, [1941] M.L.J. 1; *Hasting* v. *Hasting* [1947] 2 All E.R. 744; *Clifton* v. *Clifton* [1936] P. 182; *Le Roy-Lewis* v. *Le Roy-Lewis* [1954] 3 All E.R. 57; *J.* v. *J.* [1955] 2 All E.R. 85 at p. 91; *McLellan* v. *McLellan* [1954] 1 All E.R. 1; *Stokes* v. *Stokes* [1911] P. 195; *Raquiza* v. *Raquiza* [1947] M.L.J. 202; *Acworth* v. *Acworth* [1942] 2 All E.R. 704; *Edwards* v. *Edwards* (1868) 17 L.T. 584; *Wood* v. *Wood* [1891] P. 272; *Page* v. *Page* [1958] C.L.Y.B. para. 1042; *Stephenson* v. *Stephenson* (1925) 41 T.L.R. 550; *Donaldson* v. *Donaldson* [1958] 2 All E.R. 660; *Griffith* v. *Griffith* [1957] 1 All E.R. 494; *Ward* v. *Ward* [1947] 2 All E.R. 713; *Wakeford* v. *Wakeford* [1953] 2 All E.R. 827; *Stibbe* v. *Stibbe* [1931] P. 105.

DISTRICT COURT APPEAL.

D. S. Marshall for the appellant.

Lim Kean Chye for the respondent.

Ambrose J.: Two points arose for determination in this appeal against a maintenance order made by a Magistrate. The first was whether the potential earning capacity of the respondent should have been taken into consideration in assessing maintenance. The Magistrate ignored it, apparently taking the view that, as the respondent had not been working during her married life, she should not be made to feel that she would have to work to relieve the appellant of a financial liability which he himself had created by causing the break-up of the marriage. Here it must be pointed out that the Court of Appeal in England stated in the case of *Rose* v. *Rose*,(1) that the question whether the potential earning capacity of a wife is to be taken into account in assessing maintenance depends on the facts of each case and no general rule can be laid down. In the same case Denning L.J. said (at page 313):

". . . . if she (i.e. the wife) is a young woman with no children, and obviously ought to go out to work in her own interest, but does not, then her potential earning capacity ought to be taken into account . . . . ."

In the present case I took the view that the respondent ought to go out to work in her own interest. She is a young woman with no children, and work with its attendant responsibilities would help to develop her character along the right lines. She was married to the appellant on the 3rd September, 1955. They went to England in April, 1956. There they had quarrels over her dowry, and her relations with her husband were not always happy. On their return in November, 1956, the appellant sent her to her parents' home in Penang to settle the

matter of her dowry with her father and to change her attitude towards the appellant completely. On the 5th June, 1957, the appellant, on hearing from the respondent that she was planning to return to him, wrote to her that she was to return only when sent for and that he had no intention of meeting her at the Singapore Airport. On the 27th June, 1958, she came to Singapore and stayed with some friends. She made many attempts to meet the appellant but was unsuccessful and returned to Penang on the 2nd July, 1958. In February, 1959, she came to Singapore again and made another abortive attempt to meet the appellant. She then made a complaint to a Magistrate about the appellant's failure to maintain her. The appellant's reason for not sending for the respondent was that he was not satisfied that she had changed her attitude towards him. By this he meant that she should accept his leadership in the home, be loyal to him, refrain from unnecessary argument, and leave the final decision in controversial matters to him. Another reason the appellant had for not sending for the respondent was that her father had not given her the property which he had promised to give her on her marriage. The Magistrate appeared to me to have come to the conclusion that the appellant was wholly to blame for the break-up of the marriage. Here it is necessary to turn to a letter written by the respondent to the appellant on the 13th February, 1958. In this letter the respondent admits having hurt the appellant's feelings by letting off steam, having been resistant and argumentative, and having been guilty of excessive pride and lack of understanding in their married life. In my opinion, the respondent was partly to blame for the break-up of the marriage, and this was an additional reason for taking her potential earning capacity into account in assessing maintenance. Before her marriage, she was working as a teacher for a period of two years and earning a monthly salary of $160. I assessed her potential earning capacity at $160 a month. The maintenance awarded by the Magistrate was $450 per mensem. This was based on the fact that the appellant was earning $1,520 a month, including allowances, as a doctor employed by the City Council. Taking into consideration the respondent's potential earning capacity, which was ignored by the Magistrate, I reduced the maintenance to $300 per mensem, less tax.

The second point which I had to decide was whether I should interfere with the exercise of the Magistrate's discretion as regards the date of commencement of the maintenance order. The Magistrate made it effective from the 1st July, 1957, apparently taking the 5th June, 1957, as the date of desertion. Section 2(3) of the Married Women and Children (Maintenance) Ordinance provides that the maintenance allowance ordered by the Court shall be payable from the date of neglect or refusal to maintain the wife or from such later date as the Court directs. There was no evidence of refusal to maintain the respondent in the present case, as there was no evidence of any demand for maintenance. In fact, the appellant wrote to the respondent on the 13th February, 1957, asking her to let him know how much money she needed; and he sent her $100 seven days later. Instead of telling the appellant how much she required, she drew her own money from the Singapore Post Office Savings Bank and used it for her expenses. In the circumstances, I saw no reason why the maintenance order should run from a date prior to February, 1959, when the respondent made her complaint to a Magistrate. The effect of making the maintenance order retrospective to the 1st July, 1957, was that the appellant was liable to pay arrears due for 28 months at the rate of $450 a month and amounting to $12,600. The Magistrate ordered the appellant to pay this sum by monthly instalments of $150 in addition to the sum of $450 payable each month. To my mind it seemed manifestly unjust to penalize the appellant and enrich the respondent in this way, as the respondent had spent only $2,500 out of her own money for the period from November, 1956 to October, 1959. My reduction of the maintenance from $450 to $300 per mensem reduced the arrears from $12,600 to $8,400. Even after taking this reduction into consideration, I was of the opinion that the date fixed by the Magistrate for the commencement of the maintenance order resulted in injustice being done to the appellant. In the circumstances I had the power to interfere with the exercise of the Magistrate's discretion: see *Evans* v. *Bartlam*,[2] at page 650. I, therefore, remedied the injustice by altering the date of commencement of the maintenance order to the 1st February, 1959.

Order accordingly.

Solicitors: *Marshall & Chung; Lim Kean Chye.*